

From: Keith Schmidt
To: Microsoft ATR
Date: 1/27/02 11:43pm
Subject: Microsoft Settlement

To whom it may concern:

In accordance with provisions in the Tunney Act, I am writing this to comment on the proposed settlement in the anti-trust case U.S. v Microsoft.

I am a software developer both professionally, and as a hobbyist. I have written software for Microsoft operating systems (DOS and Windows 95/NT) as well as for several variants of Unix.

I believe that the proposed settlement is very seriously flawed and should be abandoned. Firstly, the proposed settlement does not adequately punish Microsoft for the detrimental effect on consumers caused by their abuse of their operating system monopoly. Secondly, the behavioral remedies proposed are insufficient, and in several cases, unworkable.

The Court should note that this is not the first time Microsoft has used its monopoly on the Windows operating system to drive a direct competitor (with a then-superior product) out of business using illicit, if not illegal, means (see *Caldera v Microsoft* regarding Digital Research's DR-DOS). Microsoft has also been documented to provide extra functionality in some operating system API's which are disclosed to Microsoft application developers, but not to third party application developers (see *Microsoft v Intuit* regarding undocumented system calls). Furthermore, this case is not the first time Microsoft's anticompetitive marketing practices have been brought before the Court (see the first U.S. v Microsoft case and the resultant Consent Decree). Moreover, as their violation of that same Consent Decree brought about this current case which resulted in the judgment against Microsoft, I believe that forgoing punitive damages and relying on Microsoft to police its own behavior is unconscionable.

I do not have the time to illustrate all of the flaws which I find in the proposed settlement, I will choose a few representative ones.

Firstly, I will address the broad exemption given to Microsoft to avoid disclosure of all API's and protocols as they relate to security. If the Court has not been made aware, during the course of this comment period, it was disclosed that the integration of the Internet Explorer browser with the Windows operating system carried with it a massive security flaw. This flaw allowed a malicious person free reign to take over any Internet-connected machine so configured.

As such, it could easily be argued that all API's relating to Internet Explorer and its integration with Windows should be exempt from disclosure due to security concerns. If this is the case, the settlement will fail to address the core of the case which culminated in Microsoft having been judged an illegal monopolist.

Secondly, as per the proposed settlement, Microsoft may elect not to divulge its API's and protocols to any organization which is deemed to not have a viable business plan. This exemption may be used to exclude several key classes of application developers. Primarily, this will affect Open Source and Free Software projects, many of which are based on the efforts of hobbyists and are not backed by companies with business plans (viable or otherwise). As Microsoft faces much of its current competition from such projects, it would be unconscionable to stifle these under the guise of punishing Microsoft. Secondly, entrepreneurs will be dissuaded from competing against Microsoft. For example, Microsoft could determine that any company seeking to write a better version of, say, Internet Explorer does not have a viable business plan. More importantly, such a company would have to announce its intent to compete (via its business plan) before being allowed to examine Microsoft's API's. This alone would give Microsoft a competitive advantage unknown to any other company in any industry in the world.

Lastly, I wish to address the implementation of the three-person technology committee proposed to oversee Microsoft's compliance with the proposed settlement. The only parallel I can devise for the utter absurdity of having two of the three members chosen or approved by Microsoft is the Colombians allowing Escobar to build and staff his own prison. Even ignoring the fact that they will be provided benefits by Microsoft (such as office space) while serving on the committee, the amount of oversight required to ensure compliance is far greater than three people can reasonably be expected to accomplish. For example, if they chose to audit Windows XP to ensure that it contains no code designed solely to degrade the performance of other vendors' applications, It would take them the rest of their natural lives merely to read through the hundreds of millions of lines of source code involved, let alone to analyze its effects.

In conclusion, I hope that I have successfully explained why I feel that this proposed settlement is deficient, and that the ideas within this comment will be considered when the proposed final judgment is revisited. I believe that a structural remedy would be preferable as it would require less continuing oversight. Barring that, I would like to see at a minimum enforced public disclosure of all API's, protocols and file formats, because, without the help of large numbers of software developers who are not affiliated with Microsoft, effective oversight will be impossible. Microsoft claims that these are their exclusive intellectual property. Be that as it may, they are also the

core of the monopoly, and the strength behind the documented abusive practices.

Sincerely,

Keith Schmidt